



STATE OF WASHINGTON
WASHINGTON STATE BOARD OF HEALTH

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December 13, 2006

To: Washington State Board of Health Members

From: Environmental Health Committee, State Board of Health
Keith Higman, Mike Shelton, Karen VanDusen

SUBJECT: **RECOMMENDATIONS FOR NEXT STEPS ON REVISION OF
CHAPTER 246-366, PRIMARY AND SECONDARY SCHOOLS**

Background and Summary

In March 2006, the Department of Health (DOH) released a discussion draft of proposed revisions to chapter 246-366, Primary and Secondary Schools. The draft was informed by the advisory recommendations of the School Rule Development Committee (SRDC), most of which Department staff converted into draft language. DOH received many comments on the draft, both positive and negative, with some significant concerns regarding perceived failures to adequately capture SRDC recommendations and others regarding increasing regulatory burdens and costs.

In 2006, the State Board of Health has received considerable testimony about environmental health and safety issues in schools from a variety of constituencies. These have been delivered during public comment periods throughout the year and during planned work sessions at the Board's March, October, and November meetings.

The Board's Environmental Health Committee met November 30 to review the current status of the rule proposal and formulate recommendations for next steps for promoting school environmental health and safety. These include building on the substantial body of good work that has already been done by DOH and the SRDC; recognizing that there is support and agreement on many issues; pursuing resolution of controversial issues; and revising the scope of the rules. The Committee recommends DOH develop another draft proposal for revisions to the school rule and the Board consider other actions that would complement the rule writing. The recommendations include direction to DOH to work to harmonize the rule better with authorities of other agencies without being redundant. The Committee has recommendations to engage other agencies, the Governor, and the Legislature. It also wants to assure that the original goals of the rule making effort, jointly established by the Board and DOH, and used by the SRDC, are met.

The discussion section of this memo describes these recommendations. The committee submits these recommendations for the full Board's consideration today.

Recommended Board Action

The Environmental Health Committee recommends that the Board adopt a set of recommendations for next steps at today's meeting. It may wish to consider, and amend if necessary, the following language for a motion.

Motion: The Board accepts the recommendations of its Environmental Health Committee and directs staff to work with its partners in school environmental health and safety to carry out the recommendations. The Board asks the Department of Health to develop a proposed draft revision to chapter 246-366 WAC—Primary and Secondary Schools that reflects these recommendations and the original goals established for the rule revision.

Discussion

The Board's Environmental Health Committee advances the following recommendations for future actions on regulating school environmental health and safety.

Goals: The Board should affirm and reiterate the goals established jointly by the Board and DOH at the onset of rulemaking. These goals were also part of the initial charge to the School Rule Development Committee. The goals are that the Board's school environmental health and safety rules:

1. Proactively protect children's health
2. Be based on the best available science
3. Ensure accountability between school districts, their communities, and local health jurisdictions
4. Support and promote current school health and safety programs that work
5. Present the least burdensome regulatory structure
6. Be compatible and consistent with existing related regulations (such as building codes)
7. Be realistic about resource limitations of schools and local health jurisdictions

General guidance: The next round of rulemaking should simplify, clarify, and focus the rule by following these general guidelines:

1. Remove language identifying discretionary activities for schools or health jurisdictions. Guidelines and recommendations should be communicated in guidance documents such as the K-12 Health and Safety Guide. The Board should work actively with DOH and the Office of Superintendent of Public Instruction (OSPI) to ensure guidelines recommended by the SRDC, DOH, and the Board are included in the next edition of the guide.
2. Remove provisions that are redundant with other rules and laws.

3. Remove provisions that are best handled by other agencies or organizations. The Board should work with those agencies to encourage appropriate changes to their regulations and practices.
4. Remove provisions regulating activities where multiple agencies or organizations are already providing sufficient oversight (e.g., first aid training), and work with those agencies instead to enhance that oversight. Retain provisions that are not clearly addressed by the oversight of other agencies.
5. Ensure all requirements are related to student health and safety. Suggestions for standards related to assuring a school environment conducive to learning should be referred to education agencies for further consideration. For example, lighting requirements in the Board's rule should be sufficient only to address issues such as preventing accidents, reducing injuries, aiding cleaning, promoting security, and eliminating eye strain, even if additional lighting would be optimal for learning.
6. Keep rule provisions performance-based as much as possible and avoid mandating administrative structures on schools or local health jurisdictions.
7. Review again the SRDC advisories regarding addressing specific issues in either rule or guidance.
8. Keep rule provisions with broad agreement on their value, such as for shop safety.

School siting: The role of local health jurisdictions in site assessment and approval should be retained.

School construction: Because standards for new construction and remodeling are primarily the purview of the Building Code Council and local legislative bodies, and because many local health jurisdictions lack the capacity to conduct plan reviews:

1. The Board should communicate changes to construction standards recommended by the SRDC to the Council and encourage their adoption in future building code revisions, rather than include them in a Board rule.
2. The requirement that local health officers review and approve school construction plans should be further evaluated and possibly eliminated. However, the rule should require that school districts submit plans to local health jurisdictions for a discretionary review and technical assistance on health and safety matters. Local health jurisdiction comments should be provided to local building officials, as well as to school districts.
3. The rule should continue to address construction-related conditions subject to change during normal operation and maintenance (examples may include non-slip floors, cleanable surfaces, pest exclusion, handwash facilities, shower facilities, function of air intakes, and exhaust ventilation for special use areas).
4. The rule should continue to include design and construction provisions for things that are very specific to school health and safety and perhaps outside of the scope of building codes, such as ongoing sound exposure levels that are health-based, playground equipment construction, and emergency eyewash placement.
5. Construction design approval should be coordinated through local building officials.

Pesticide use: The Washington Department of Agriculture has authority to regulate pesticide storage and use on school grounds. Pesticide application should not be addressed in the Board rule. Instead, the Board should ask the Department of Agriculture to consider changes to its rules based on SRDC recommendations. The Board should ask Agriculture to consider requiring schools to develop and implement integrated pest management plans. Then schools would have requirements for integrated pest management consistent with legislatively mandated requirements for state agency buildings. DOH should assure school guidelines address issues of teachers and staff bringing inappropriate pesticides and other chemicals into school.

Operation and maintenance: Regulation of operation and maintenance is an identified gap in school regulation. Addressing potential health and safety problems related to operation and maintenance practices should be a central focus of the rule. Areas the rule should continue to address include:

1. Cleaning
2. Chemical use and storage
3. HVAC operation
4. Indoor air quality
5. Moisture control and mold prevention
6. Monitoring for drinking water quality
7. Pest management generally
8. Safety in special areas
9. Playgrounds.

Local health jurisdiction inspections: Local health jurisdictions have special expertise and should have active school safety programs; although the success of those programs requires that they work collaboratively with schools and other local partners, such as through jurisdiction-wide school health and safety advisory committees. Therefore:

1. Requirements that local health jurisdictions inspect schools at a specified frequency (not just periodically as currently required) should be included.
2. As alternatives, consider provisions that schools:
 - a. Establish local health and safety teams (similar to the New York model), provided that the local health officer or a delegate is a member of that team, the team uses a pre-approved checklist for inspections, and the inspection results are reported to the public; or
 - b. Use another inspection process approved by the local health officer.
3. Health officers that find serious problems should work with school districts to bilaterally develop a plan of corrective action that considers the degree of risk and competing demands and is subject to health officer approval.
4. Because the environmental health system in this state is primarily funded through fees, and absent other funding sources, local health jurisdictions should implement fees to ensure that school inspection programs are in place and adequately funded.

Drinking water testing: Periodic testing of drinking water for contaminants that pose a serious health risk to children in school is an important activity worthy of a statewide requirement, but every reasonable effort should be made to reduce any unnecessary burden on schools. Therefore:

1. The next iteration of the rule should require lead testing at drinking water fixtures, but DOH should carefully review the requirements in the draft rule and consider ways to reduce the impact. Options for consideration include:
 - a. Modifying testing protocols;
 - b. Allowing a phase-in period for implementing any mandate;
 - c. Requiring lead testing only in schools serving younger children for whom data about lead exposure indicates significant impact on mental and behavioral development;
 - d. Relaxing requirements for follow-up testing of fixtures found to be safe on initial testing.
2. The Board should devote time on its agenda to better understand the science for and against testing for copper, since the SRDC recommended a copper-testing mandate but DOH did not include one in its discussion draft.

Communication: Significant problems that have been made very clear to the Board are the potential lack of transparency in solving health and safety problems and breakdown in communication between school administrators, staff, and parents. The next iteration of the rule should include provisions for communication by school administration to staff and parents about known environmental health and safety issues. Consider a requirement to make plans of correction available for review by community members or use parent-teacher health and safety committees. Good communication will serve to bring problems to the attention of local school boards, which have ultimate oversight of school environmental health and safety.

Waivers: The Board of Health has very limited implementation authority or enforcement power. Waiver provisions should be under the authority of local health officers. Waivers should be formally requested by the local school board after public notice and hearing. However, the rule should establish the minimum provisions that must be considered before a waiver could be granted.

Drafting: The Board should request that Board staff and the Environmental Health Committee have opportunities to review and provide input on any subsequent draft rule proposal prior to public release.

Funding: Successful implementation of Board rules will require additional resources. Specific proposals the Board might wish to support include:

1. The currently proposed DOH decision package for enhancing the Department's school environmental health and safety program.
2. The OSPI proposal to increase funding for school maintenance and repairs to address health and safety problems. This might include developing prioritization

for funding of environmental health and safety problems presenting the highest degree of risk.

3. Funding to Educational Service Districts (ESDs) to enhance their ability to help school districts identify and remedy environmental health and safety problems, develop moisture remediation plans, and propose bilateral compliance agreements. This might include providing funding for each ESD to add an industrial hygienist to its staff.
4. OSPI's development of operation and maintenance standards for schools that would be tied to funding along the lines of the existing construction standards for high-performing schools.

Appeals process: There should be a process for asking a specified state entity to hear and respond to complaints about environmental health and safety problems in schools that are not addressed to the complainants' satisfaction at the local level. Recognizing the ultimate authority of local health officers and local boards of health in implementing Board rules, the Board could still recommend establishment of some type of appeals board or requirement for mediation to resolve disagreements about plans of correction. Creating such a process is outside the Board's authority and would require legislative action. The Board should work with DOH, OSPI, and other partners to suggest an appeals mechanism.